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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,643	03/08/2004	Percival C. Banks	Banks 0401	2231

7590 10/01/2008

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EXAMINER	
YOO, REGINA M	

ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
10/01/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/796,643	BANKS, PERCIVAL C.	
	Examiner	Art Unit	
	REGINA YOO	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 June 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5,6,13 and 15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3, 5-6, 13 and 15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The amendment filed on 6/30/2008 has been received and claims 1-3, 5-6, 13 and 15 are pending.

Specification

1. The disclosure is objected to because of the following informalities: in the Specification amendment submitted 6/30/2008 for page 5 line 25, it appears that the reference number 23 is missing before the new amendment "and cover vent 38".

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-3, 5-6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spence (4783321) in view of Lorenz (4551311).

As to Claim 1, Spence ('321) discloses a particulate and fluid tight vent filter seal for a sterilization container (10) having container planar members (24, 18) that enclose an interior space (interior space of the sterilization container 10) wherein one of the container planar members (24, 18) is a vent planar member (24) that is a generally flat member (see Figures 2, 4, 6, 10) that has an interior surface (see Figures 2, 6) within the interior space, an exterior surface (see Figure 4) and a container vent (38) by which sterilization media can pass through the vent planar member (24) into the interior space of the container (10), and a sheet filter (20) disposed within the interior space of the container (10) comprising:

a vent recess (between 36, 37) formed within the vent planar member (24) (see Figure 8) and completely surrounding the container vent (38) (see Figure 6) wherein said vent recess (between 36 and 37) has an arcuate concave surface in the vent planar member (24) interior surface (see Figure 8) and further wherein said sheet filter (20) extends over the entire container vent (38) and said surrounding vent recess (between 36 and 37) (see Figures 2 and 8);

a generally planar filter cover (18) that is disposed to move into engagement with the vent planar member (24) (see Figures 2, 6, 8 and 10) and having a cover vent (55, 52) by which sterilization media can pass through said filter cover (18), said planar filter cover (18) further comprising a generally convex cover ridge (44) formed in said filter

cover (18) (see Figure 8) wherein said cover ridge (44) completely surrounds the cover vent (55, 52) (see Figure 6) and said cover ridge (44) is coextensive with said vent recess (between 36 and 37) and sized to at least partially fit into said vent recess (between 36 and 37) (see Figure 8), whereby when said vent recess (between 36 and 37) and said cover ridge (44) are aligned and said filter cover (18) is operatively secured in place, a positive force is applied to said cover ridge (44) forcing it toward and in engagement with said vent recess (between 36 and 37), whereby said cover ridge (44) is forced against said sheet filter (20) (see Figure 8) whereby said cover ridge (44) and said vent recess (between 36 and 37) form a particulate and fluid tight seal that surrounds both the container vent (38) and said cover vent (52, 55) (see Figures 2 and 6) which prevents (or capable of preventing) fluid from entering or leaving the sterilization container (10) through the seal (see entire document, particularly Col. 5 line 50 to Col. 6 line 7).

Spence ('643) does not appear to specifically teach that a gasket is secured wholly within said vent recess and in contact with substantially the entire concave surface of said vent recess where said gasket is protected against damage or that said sheet filter is forced against said gasket to form a seal.

It was known in the art at the time of invention to provide a gasket secured wholly within a vent recess and in contact with substantially the entire concave surface of a vent recess where it is protected against damage and a sheet filter is forced against the gasket to form a seal.

Lorenz ('311) discloses a vent filter seal for a sterilization container (10, 12) having planar members (12, 14, 18) (see Figures 1-17) wherein one of the container planar members is a vent planar member (14) that is a generally flat member that has an interior surface and an exterior surface and a container vent (16) through which sterilization media can pass through the vent planar member into the interior space of the container (10, 12) and a sheet filter (18) inside the container covering the container vent (16) comprising:

a vent recess (24 with 22 and 26 as sides) within the vent planar member (14) surrounding the container vent (16),

wherein a gasket (52) is secured wholly within said vent recess (24 with 22 and 26 as sides) where it is protected against damage (see Figure 4), and

a generally planar filter cover (12) having a planar surface,

wherein said gasket (52) is exposed when said filter cover (12, 48) is removed to change the filter (18),

in order to press the filter sheet against the opposite surface to form a seal and thus preventing the passage of microbial contamination underneath filter sheet (see Figure 4 and Col. 4, lines 1-10 and 59-68).

It would have been obvious to one of ordinary skill in this art at the time of invention to provide a gasket in the vent recess of the vent filter seal of Spence in order to further prevent entry of microbial contamination to the interior of the sterilization container by pressing a filter sheet against a gasket to form a seal as shown by Lorenz.

While Lorenz ('311) does not specifically teach in Figure 4 that the gasket 52 is in contact with substantially entire concave surface of said vent recess, both Spence ('321) in Figure13 (where gasket 16 is in contact with entire surface of a recess) and Lorenz ('311) in Figure 4 (gasket 28 in contact with the entire surface of recess 26) indicate that it is known in the art to provide a gasket that contacts entire surface of a recess. Thus, it would have been obvious to one of ordinary skill in this art at the time of invention to provide a gasket of such a size that it covers entire surface of the vent recess in the device of Spence as modified by Lorenz as a known, alternate size of gasket in a recess in order to provide a good seal between two parts as shown by Spence and Lorenz.

In the event that the shape of the vent recess is not disclosed by Spence with sufficient specificity, then the following rejection will apply.

As to the limitation that the vent recess is an arcuate concave shape, it was well known in the art at the time of invention to utilize various shape/configuration of a recess for press-fitting two parts and thus, it would have been obvious and well within the purview of one of ordinary skill in this art at the time of invention to change the shape of vent recess to a more arcuate concave shape as a known alternate shape of a recess in order to press-fit two parts. Only the expected results would be attained.

As to Claims 2-3, Spence ('321) discloses that the vent filter seal is further comprised of a protective vent ridge (114) extending above the exterior surface and

surrounding the container vent (38) (see Figures 1 and 4, and Col. 9 lines 67-68), wherein said protective vent ridge is the opposite side of said vent recess (see Figures 1-2, 4 and 6). Lorenz ('311) also discloses a protective vent ridge (see Figures 10-12) extending above the exterior surface of a vent planar member (12), wherein the protective vent ridge is on the opposite side of said vent recess (see Figures 10-12) in order to provide a means to register the base flanges on the container bottom to afford a degree alignment when the sterilization containers are stacked (see entire document, particularly Col. 5 lines 51-54).

While neither Spence ('321) nor Lorenz ('311) appears to specifically teach that the protective vent ridge surrounds the container vent, it would have been obvious to one of ordinary skill in this art at the time of invention to change the shape of said protective vent ridge from discrete upstanding lugs to a continuous lugs that surrounds the outer periphery in the device of Spence as modified by Lorenz as an alternate, known shape of alignment means in order to stack multiple sterilization container as well as to protect the vent (see MPEP §2144.04 Section IV (B)).

As to Claim 5, Spence ('321) discloses that said cover vent (52, 55) and the container vent (38) are spaced apart a distance greater than the thickness of the filter (20) therebetween when said filter cover (18) is operatively secured in place whereby lateral movement of sterilization media between the container vent (38 of 24) and said cover vent (55, 52 of 18) is facilitated (see Figures 8 and 10; the distance between 41 and 24 is greater than the thickness of filter 20).

As to Claim 6, Spence ('321) discloses that the container vent (38) is a pattern of holes through the vent planar member (24) (see Figures 2 and 10) and further wherein said cover vent (52, 55) is a pattern of holes through said filter cover (18) within the area defined by said cover ridge (44) (see Figure 6) wherein the holes (38) of the container vent (24) and said holes (52) of said filter cover (41 of 18) are offset relative to each other when said filter cover (18) is operatively secured in place (see Figure 10).

As to Claim 15, Spence ('321) discloses that the vent planar member is in a removable container lid (24) (see Figures 1-2) and said gasket of Lorenz is exposed when said filter cover (18) is removed to change the filter (20) (see Figure 2 and Col. 7 lines 1-13).

Thus, Claims 1-3, 5-6 and 15 would have been obvious within the meaning of 35 U.S.C. 103(a) over the combined teachings of Spence ('321) and Lorenz ('311).

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spence (4783321) in view of Lorenz (4551311) as applied to claim 1 above, and further in view of Stolzman (5361928).

Spence ('321) and Lorenz ('311) are relied upon for disclosure described in the rejection of claim 1 under 35 U.S.C. 103(a).

While Lorenz ('311) discloses a gasket with a rectangular cross-section that forms a part of the vent filter seal for a sterilization container, Lorenz ('311) does not appear to specifically teach that the gasket has a generally concave cross-section.

It was well known in the art (in the area of using gaskets for sealing closures) at the time of invention to utilize gaskets of various shapes/cross-sections. Stolzman ('928) exemplifies a closure assembly comprised of a concave cross-sectioned gasket (40) secured wholly within a recess where it is protected against damage in order to provide a seal between two parts (see entire document, particularly Figures 2-5). It would have been obvious to one of ordinary skill in this art at the time of invention to provide a gasket of a concave cross-section in the vent filter seal of Spence as modified by Lorenz in order to provide an alternate gasket configuration for sealing two parts to prevent entry of contaminants (such as the container and the filter cover) as exemplified by Stolzman.

Thus, Claim 13 would have been obvious within the meaning of 35 U.S.C. 103(a) over the combined teachings of Spence ('321), Lorenz ('311) and Stolzman ('928).

Response to Arguments

6. Applicant's arguments with respect to claims 1-6, 13 and 15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REGINA YOO whose telephone number is (571)272-6690. The examiner can normally be reached on Monday-Friday, 10:00 am - 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/
Primary Examiner, Art Unit 1797

RY